IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 8TH DECEMBER 2006 / 17TH AGRAHAYANA 1928

Crl.MC.No. 2331 of 2006()

CC.126/2006 of CHIEF JUDICIAL MAGISTRATE COURT, KOLLAM

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PETITIONER: ACCUSED 1 & 2:

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1. GOPI KRISHNAN UNNITHAN,
S/O. RAVEENDRAN UNNITHAN, AZHAKATHU VEETTIL,
CHAVARA SOUTH, KARUNAGAPPALLY TALUK, KOLLAM.

2. HARIKRISHNAN UNNITHAN,
S/O. RAVEENDRAN UNNITHAN, AZHAKATHU VEETTIL,
CHAVARA SOUTH, KARUNAGAPPALLY TALUK, KOLLAM.

BY ADV. SRI.C.RAJENDRAN

RESPONDENTS: COMPLAINANT/DEFACTO COMPLAINANT:

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1. STATE OF KERALA,
REPRESENTED BY SUB INSPECTOR OF POLICE,
KOLLAM EAST POLICE STATION THROUGH THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. VIPIN, S/O. SHAMSUDEEN,
THUSHARA HOUSE, POLAYATHODU CHERRY,
VADAKKEVILA VILLAGE, KOLLAM.

BY PUBLIC PROSECUTOR: SRI.K.A.AKBAR
SRI.SOORAJ T.ELENJICKAL

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT.J

Crl.M.C. No. 2331 OF 2006

Dated this the 8th day of December 2006

ORDER

Petitioners are accused in a prosecution under Section 420 read with 34 I.P.C. They are brothers. Proceedings were initiated on the basis of a private complaint filed by the second respondent/defacto complainant. The said complaint was referred to the police. Police conducted the investigation and filed the final report making allegations under Section 420 read with 34 I.P.C against both the petitioners Cognizance has been taken. The petitioners received summons from the court. They have rushed to this Court with this petition under Section 482 of the Cr.P.C. with the request that the proceedings may be quashed by invoking the powers under Section 482 of the Cr.P.C

2. What is the reason? The learned counsel for the petitioner submits that the allegations raised are totally false and incorrect. It is contended that the complaint has been prevaricating. In proceedings initiated before the Consumer Redressal Forum, the second respondent has advanced a totally different case. There are no elements of the offence of cheating on true facts. In these circumstances the proceedings may be quashed it is prayed.

3. I have been taken through the petition and the Annexures. The crux of the allegations against the petitioners raised by the second respondent/defacto complainant is that a vehicle was entrusted to the first petitioner on certain terms. The petitioner wanted to take the vehicle for a test drive. He took the vehicle and did not return the same. The second respondent/ defacto complainant was thereby cheated. This is the crux of the allegations.

4. The gist of the contentions is that the allegations cannot be accepted and that even if accepted it cannot amount to offences punishable under Section 420 of the I.P.C. Ordinarily and normally an accused person against whom criminal proceedings have been initiated unjustifiably, according to me, must seek discharge from the Court which is seized of the matter. In every such case the discharge or acquittal is later possible before the trial court , the indictee will not be justified in running to this Court with a petition under Section 482 of the Cr.P.C . Of course the availability of such a remedy under Section 239 will not fetter the powers of this Court under Section 482 of the Cr.P.C. In an appropriate case if interests of justice compellingly warrant such course, invocation of such powers under Section 482 of the Cr.P.C. is possible. But certainly the jurisdiction under Section 482 of the Cr.P.C cannot certainly be used in substitution of the jurisdiction of the Magistrate to discharge the accused under section

239/240 of the Cr.PC

5. Having considered all the relevant inputs which have been laboriously brought to my notice by the learned Counsel for the petitioners, I am certainly of opinion that it is for the petitioners to resort to, the ordinary, normal and regular procedure of raising contentions before the learned Magistrate to justify their claim for discharge. A person against whom criminal proceedings are initiated is entitled to get the same prematurely terminated by claiming discharge under Section 239/240 of the Cr.P.C. I find no circumstances available in this case to short-circute the normal procedure prescribed by the Code by terminating the proceedings by invoking the jurisdiction under Section 482 of the Cr.P.C

6. In the result this Crl.M.C. is dismissed But I may hasten to observe that the dismissal of the Crl.M.C. will not in any way fetter the rights of the petitioners to claim discharge from the Magistrate at the stage of Section 239/240 of the Cr.P.C. The learned Magistrate must consider the claim for discharge in the light of materials which have been placed before him along with the final report submitted under Section 173 of the Cr.P.C

R.BASANT, JUDGE

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